

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JUSTIN RUSSELL,

Plaintiff,

v.

ANDREW PALLITO, CYNTHIA MASON,
RICHARD BILODEAU, LISA MENARD,
MICHAEL TOUCHETTE, ROBERT
ARNELL,

Defendants.

Case No. 5:15-cv-126

**ENTRY ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION
(Docs. 178, 183, 193, 204)**

Plaintiff Justin Russell, who was formerly under the supervision of the Vermont Department of Corrections (“DOC”), brought this case under 42 U.S.C. § 1983 against Defendants Andrew Pallito, former DOC Commissioner; Cynthia Mason and Richard Bilodeau, DOC Correctional Officers; Lisa Menard, former DOC Commissioner; Michael Touchette, current DOC Commissioner; and Robert Arnell, Correctional Facility Operations Manager. (*See* Docs. 1, 21, 166.) Plaintiff alleges that Defendants violated his right to the free exercise of religion because of a DOC policy relating to the dietary restrictions for Muslim detainees.

Before the court are the following motions: Russell’s Renewed Motion to Certify Class Action (Doc. 178); and Russell’s Motion for Joinder of Additional Plaintiff on Expedited Basis (Doc. 183).

On December 18, 2019, the magistrate judge issued his Report and Recommendation on Russell’s Renewed Motion to Certify Class Action. (Doc. 193.) Finding that “Russell’s claims

would require individualized inquiries for each proposed class member,” the magistrate judge recommended that Russell’s motion be denied. (*Id.* at 3.)

Russell’s objections to the magistrate judge’s report and recommendation on the motion were filed on January 1, 2020. (Doc. 194.)

On February 26, 2020, Plaintiff’s counsel informed this court that Plaintiff had been released from DOC custody as of February 21, 2020. (Doc. 203.)

A day later, on February 27, 2020, the magistrate judge issued his Report and Recommendation on the Motion for Joinder of Additional Plaintiff on Expedited Basis. (Doc. 204.) The magistrate judge recommended that Plaintiff’s motion for joinder be denied. First, the magistrate judge found that Plaintiff failed to establish good cause under Federal Rule of Civil Procedure Rule 16(b) for permission to amend the complaint to join an additional plaintiff. (Doc. 204 at 5–8.) The magistrate judge additionally noted that “[d]iscovery has been closed in this case for approximately two years” and that “factor weighs against granting Russell leave to join another plaintiff at this late stage.” (Doc. 204 at 8, 9.)

The magistrate judge also considered Plaintiff’s motion to join an additional plaintiff under Rule 20, which governs permissive joinder. Pursuant to Rule 20, the magistrate judge found that it would not be appropriate to join a new plaintiff because “the claims asserted by Russell and [the new plaintiff] present few, if any common questions of law or fact.” (Doc. 204 at 12.)

Plaintiff did not file objections to the magistrate judge’s recommendation that his motion to join an additional plaintiff be denied. The time for Plaintiff’s objections has elapsed.

A district judge must make a *de novo* determination of those portions of a magistrate judge’s report and recommendation to which an objection is made. *See* Fed. R. Civ. P. 72(b)(3);

28 U.S.C. § 636(b)(1); *Sargent v. Soc. Sec. Admin., Comm’r*, No. 5:11-CV-44, 2019 WL 5388109, at *2 (D. Vt. Oct. 22, 2019). The district judge may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3).

The court first considers the magistrate judge’s Report and Recommendation on the Motion for Joinder of Additional Plaintiff on Expedited Basis (Doc. 204).

After careful review of the record and the magistrate judge’s thorough Report and Recommendation, this court ADOPTS the magistrate judge’s recommendations in full for the reasons stated in the Report (Doc. 204).

In light of this court’s adoption of the Report and Recommendation (Doc. 204), and Plaintiff’s release from DOC custody, the Plaintiff’s Renewed Motion to Certify Class Action (Doc. 178) is DENIED as MOOT.

Dated at Burlington, in the District of Vermont, this 28th day of May, 2020.

/s/ Geoffrey W. Crawford
Chief Judge
United States District Court